

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

v.

ROMAN ARAGON, *et al.*,

Defendants.

69cv07941-MV/KK

RIO CHAMA STREAM SYSTEM

Section 7: Rito de Tierra Amarilla

**MOTION TO ESTABLISH PROCEDURES FOR ENTRY OF PARTIAL FINAL
JUDGMENT AND DECREE ON SURFACE WATER IRRIGATION RIGHTS
IN THE RITO DE TIERRA AMARILLA SUBSECTION OF
SECTION 7 OF THE RIO CHAMA STREAM SYSTEM**

NOW COMES the Plaintiff State of New Mexico, *ex rel.* State Engineer (“State”), and moves this Court to enter an order establishing procedures that will govern the entry of a Partial Final Judgment and Decree on Surface Water Irrigation Rights in the Rito de Tierra Amarilla Subsection of Section 7 of the Rio Chama Stream System. A proposed form of order adopting the procedures proposed herein is attached as Exhibit 1 to this Motion.

I. INTRODUCTION

This cause of action is a general adjudication of all water rights of the Rio Chama Stream System, a tributary of the Rio Grande. The adjudication of water rights and the hydrographic survey of the Rio Chama Stream System has been divided into eight sections, some of which are further divided into subsections. The Court has previously entered partial final judgments as

follows: *Final Decree* (Section 8) (Doc. 49, filed 08/07/1969, originally filed in State Court on June 1, 1962); *Partial Final Judgment and Decree* (Section 1) (Doc. 1778, filed 07/26/1971); *Partial Final Decree Rio El Rito Stream System* (Section 4) (Doc. 2394, filed 06/25/1973); *Partial Final Judgment and Decree Cañones & Polvadera Stream System* (Section 6) (Doc. 2862, filed 02/06/1976); *Partial Final Judgment and Decree on Surface Water Irrigation Rights in Section 5 of the Rio Chama Stream System* (Doc. 9669, filed 04/08/2010); *Partial Final Judgment and Decree of Surface Water Irrigation Rights in the Rio Nutrias Subsection of Section 3 of the Rio Chama Stream System* (Doc. 10920, filed 06/04/2013).

The Office of the State Engineer completed its hydrographic survey of surface water irrigation uses in the Rito de Tierra Amarilla Subsection of Section 7 of the Rio Chama Stream System (“Tierra Amarilla Subsection”) in 2001 and the State of New Mexico commenced the adjudication of water rights in this subsection immediately thereafter. *See Notice of Filing of the Rio Chama Stream System Rito de Tierra Amarilla Hydrographic Survey* (Doc. 6142, filed 01/31/01).

The adjudication of the elements of water rights in individual subfiles in the Tierra Amarilla Subsection of surface water irrigation uses was completed by 2010, with the exception of priority dates and irrigation water requirements. *See Scheduling and Procedural Order for Determination of Priority Dates and Irrigation Water Requirements in the Rito de Tierra Amarilla Subsection of Section 7 of the Rio Chama Stream System* (Doc. 9687, filed 04/21/2010).

On June 7, 2011, the Court entered its *Order Making Final Determination of Priority Dates in the Rito de Tierra Amarilla Subsection of Section 7 of the Rio Chama Stream System* (Doc. 10153). On January 18, 2018, the Court entered its *Order Making Final Determination of Irrigation Water Requirements in the Rito de Tierra Amarilla Subsection of Section 7 of the Rio*

Chama Stream System (Doc. 11316). The Court's determination of priority dates and irrigation water requirements in the Tierra Amarilla Subsection is binding on all claimants, known and unknown, who claim a right to use surface or underground water in the Tierra Amarilla Subsection. Claimants in the Tierra Amarilla Subsection have yet be to provided with an opportunity to file *inter se* objections to the remaining water rights elements (source of water, purpose of use, point of diversion, and location and amount of irrigated acreage) in subfile orders previously entered in the Tierra Amarilla Subsection.

II. *INTER SE* PROCEEDINGS AND ENTRY OF FINAL JUDGMENT AND DECREE

The State proposes the following procedures that would require all persons claiming water rights in the Tierra Amarilla Subsection to file *inter se* objections if they object to the determination of water rights identified in individual subfile orders entered in the Tierra Amarilla Subsection. These procedures will lead to the entry of a Partial Final Judgment and Decree on Surface Water Irrigation Rights in the Tierra Amarilla Subsection of Section 7 of the Rio Chama Stream System ("Decree"). This Decree will not affect or determine claims to groundwater or to stockwatering uses in the Tierra Amarilla Subsection.

1. The State shall prepare a proposed Partial Final Judgment and Decree on Surface Water Irrigation Rights in the Rito de Tierra Amarilla Subsection of Section 7 of the Rio Chama Stream System (attached hereto as Exhibit 2) with an Addendum that summarizes the water rights adjudicated and decreed therein. A copy of the Addendum, and hydrographic survey maps showing the location of all tracts described in the proposed Decree, shall be filed with the Court no later than ten (10) days after the entry of the Court's order establishing procedures for the entry of a partial final judgment and decree. Within ten (10) days of the entry of this order, the

proposed Decree, Addendum, and hydrographic survey maps shall be made available for public inspection at the Office of the Rio Arriba County Clerk in Tierra Amarilla and in Española; at the Federal District Courts in Santa Fe and in Albuquerque; at the Utton Center at the UNM School of Law; and the Water Resource Allocation Program (WRAP) of the Office of the State Engineer (“OSE”) in Santa Fe at 130 South Capitol Street. These documents shall also be posted on the OSE website (www.ose.state.nm.us).

2. The State shall prepare a proposed Notice of Proposed Partial Final Judgment and Decree on Surface Water Irrigation Rights in the Rito de Tierra Amarilla Subsection of Section 7 of the Rio Chama Stream System (“Mailing Notice,” attached hereto as Exhibit 3) to be served on defendants in the Tierra Amarilla Subsection, and the United States and community ditches in the Tierra Amarilla Subsection. The Mailing Notice shall be mailed to the last known address of individual subfile defendants as they are listed in the Court’s records.¹ The State shall not be required to make a determination of current ownership of tracts, nor mail notices to any person not a party to these proceedings. A successor-in-interest to an individual subfile defendant may request substitution of parties under Fed.R.Civ.P. 25(c) in order to participate in the proceedings. The State shall file an appropriate Certificate of Service with the Court following the mailing of the Mailing Notice to defendants in the Tierra Amarilla Subsection.

3. The State shall prepare a proposed Public Notice of Proposed Partial Final Judgment and Decree on Surface Water Irrigation Rights in the Tierra Amarilla Subsection for publication (“Public Notice,” attached hereto as Exhibit 4) to inform all known and unknown claimants of water rights in the Tierra Amarilla Subsection of their right to participate and offer

¹ Under the *Procedural Order for the Adjudication of Water Rights Claims in Section 7 of the Rio Chama Stream System* (Doc. 6939, filed 11/19/2002), “[a]ll claimants, whether or not they are represented by counsel, are responsible for informing the Court of any changes in their mailing address or changes in ownership of water rights or real property associated with the rights.” Doc. 6939 at p.6, ¶ IV.

evidence in support of *inter se* objections to the proposed Decree in the Tierra Amarilla Subsection. The Public Notice shall be published once a week for four consecutive weeks in the *Rio Grande Sun*, which is a newspaper of general circulation in the Tierra Amarilla Subsection and the Rio Chama Stream System generally. The State shall file an appropriate Proof of Publication with the Court following publication of the Public Notice.

4. The Mailing Notice and the Public Notice shall inform claimants in the Tierra Amarilla Subsection that this *inter se* proceeding will be the only opportunity to file objections to the determination of surface water irrigation rights described in the proposed Decree, Addendum, and hydrographic survey maps, and that **all persons having water rights in the Tierra Amarilla Subsection will be bound by the outcome of the proceedings to resolve *inter se* objections.**

5. The Mailing Notice and the Public Notice shall inform claimants in the Tierra Amarilla Subsection that all *inter se* objections must be filed with the Court, in person or by mail, for receipt no later than _____ (60 days after entry of procedural order). Blank forms that may be used for filing *inter se* objections (attached hereto as Exhibit 5) shall be mailed to defendants with the Mailing Notice, made available to the public with the proposed Decree at the locations described in Paragraph 1 above, and posted on the OSE website. The form shall also be included with the Mailing Notice to be mailed to defendants in the Tierra Amarilla Subsection. The form shall also be included with the Mailing Notice to be mailed to defendants in the Tierra Amarilla Subsection.

6. If any *inter se* objections are timely filed, the State shall prepare a report that summarizes all objections and make the report available for public inspection at the locations described in Paragraph 1 above, by _____ (90 days after entry of procedural order). The State

shall mail a copy of the *inter se* objections to those persons whose water rights are the subject of those objections, by certified mail, return receipt requested, and file an appropriate Certificate of Service with the Court. Persons who file timely *inter se* objections and the affected subfile parties/defendants, shall be required to attend a mandatory scheduling and pretrial conference with the Court in Santa Fe on ____ (134 days after entry of procedural order). Further procedures for resolving objections to the proposed Decree shall be determined at the conference.

7. Whether or not they have filed an objection, all persons having water rights in the Tierra Amarilla Subsection may participate in the proceedings to resolve *inter se* objections. Persons who elect to participate in the proceedings to resolve *inter se* objections shall file a Notice of Intent to Participate in *Inter Se* Proceedings form with the Court no later than ____ (120 days after entry of procedural order). Blank forms that may be used for this purpose (attached hereto as Exhibit 6) shall be available to the public at the locations described in Paragraph 1 above with the report that summarizes *inter se* objections, and posted on the OSE website. Persons who elect to participate in the proceedings to resolve *inter se* objections shall also be required to attend the mandatory scheduling and pretrial conference with the Court in Santa Fe.

8. At the conclusion of the *inter se* process, the Court will enter the State's proposed Decree as a Partial Final Judgment and Decree for the Tierra Amarilla Subsection, with an Addendum that summarizes all water rights, amended by any changes ordered through the *inter se* process. The entered Decree will represent the final adjudication of all claims for surface water irrigation rights in the Tierra Amarilla Subsection and bind all claimants of water rights of any type in the Tierra Amarilla Subsection, subject to the rights of parties who are not included within the Tierra Amarilla Subsection to object to the Decree, or to contest any individual water

right described in the Decree, in any further *inter se* proceedings ordered by the Court for the Rio Chama or Rio Grande Stream Systems generally.

9. The State has prepared draft copies of the proposed Decree (without the Addendum or associated hydrographic survey maps), a proposed Mailing Notice to be served on defendants in the Tierra Amarilla Subsection, a proposed Public Notice for publication, a proposed *Inter Se* Objection Form, and a proposed Notice of Intent to Participate in *Inter Se* Proceedings, which are attached hereto as Exhibits 2, 3, 4, 5, and 6.

WHEREFORE the Plaintiff State of New Mexico requests that the Court enter its Order granting this Motion and adopting the procedures set forth herein for the purpose of entry of a Partial Final Judgment and Decree of Surface Water Irrigation Rights in the Tierra Amarilla Subsection of Section 7 of the Rio Chama Stream System.

Submitted by:

/s/ Felicity Strachan
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on May 14, 2018, I filed the foregoing electronically through the CM/ECF system, which caused the parties or counsel reflected on the Notice of Electronic Filing to be served by electronic means, and mailed the same to the parties listed on the attached service list by U.S. mail.

/s/ Felicity Strachan
FELICITY STRACHAN